

AGENDA ITEM #11

November 2, 2001

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Consideration of Grant Documents Associated with Acquisition of Staten Island, San Joaquin County by The Nature Conservancy
(For Possible Commission Action)

BACKGROUND:

In July 2000, Mike Eaton of The Nature Conservancy (TNC), briefed the Commission on the grant application to fund acquisition of Staten Island, San Joaquin County, to protect its wildlife-friendly agricultural values.

The Commission raised a number of issues primarily regarding long-term management of Staten Island. Those comments were forwarded to TNC in a letter (see letter dated September 1, 2000).

The grant application was selected for funding after scrutiny in the CALFED review process. At the December 2000 CALFED Policy Group Meeting, Secretary for Resources Mary Nichols asked for input on the selection of this project. Follow-up comments were submitted in writing (see letter dated February 14, 2001).

STATUS OF THE PROJECT:

Funding for acquisition of Staten Island is being split between Proposition 204 funds (ecosystem restoration) and Proposition 13 funds (flood control, habitat and agriculture) resulting in two separate agreements. Several meetings were held to develop and review the language in the contracts; I did attend several of the meetings, reviewed drafts of the agreements and suggested clarifying changes. An appraisal has been completed. The entire package of agreements and appraisal has been approved by Secretary Nichols and Director Hannigan (Department of Water Resources administers the Proposition 13 funds), and is being reviewed by the Department of General Services.

Mike Eaton will brief the Commission on the two agreements, and TNC's vision for short-term and long-term management of Staten Island. He has prepared the attached brief summary of the terms of the two agreements. The agreements are available in the Commission's office for review.

STAFF RECOMMENDATION:

The Commission should consider the briefing by Mr. Eaton, and direct staff to prepare a letter to CALFED that indicates that the agreements meet the concerns expressed earlier by the Commission.

If the Commission feels the agreements do not meet the concerns expressed earlier, the Commission should identify areas of inconsistency and direct staff to communicate its concerns to CALFED, TNC, DWR and the Secretary.

The Staten Island Acquisition – Overview and Summary of Agreements

With funding from CALFED (Proposition 204, Ecosystem Restoration Program Account) and the Department of Water Resources (Proposition 13, Flood Corridor Protection Program), The Nature Conservancy (TNC) is in escrow to acquire the fee simple interest in Staten Island, subject to a reservation by the current owners of the oil and gas mineral estate (with limited rights to surface access for exploration and development). (The Prop. 13 water bond, enacted by the voters in 2000, allocated \$70 million to DWR for grants or direct expenditures to acquire fee or easement interest in real property “for the purposes of flood control protection, agricultural land preservation, and wildlife habitat protection.” California Water Code, Section 79036 and following.)

The acquisition price is \$30 million for the 9,106 acres of Staten Island, existing buildings, facilities, and equipment. The fair market value of the bare land was determined to be \$27.194 million and the fair market value of the improvements was valued at \$2.238 million; and the fair market value of the personal property (i.e. machinery and equipment) were valued at \$1.988 million. The grand total of the purchase is \$31.42 million. These dollar values were established by independent appraisal, and that independent appraisal has been reviewed and approved by the California Departments of Water Resources and General Services.

Two grant agreements, between TNC and The National Fish and Wildlife Foundation (contract manager for CALFED) and between TNC and DWR, establish the framework and conditions for this acquisition and subsequent management of Staten Island. These agreements are summarized below.

The Proposition 13 Grant Agreement

This document and its appendices provide for the grant to TNC of \$17,555,436 for the acquisition and document the conditions associated with the grant. The primary conditions are that TNC grant to DWR a conservation easement over the property at close of escrow (see discussion of Exhibit E, below), and that TNC commit to participation in the North Delta Improvement Program for a period of up to 10 years following close of escrow, with the intention of granting to DWR the appropriate property interests in Staten Island that would permit DWR to construct and operate a flood management project on Staten Island. This document also specifies reporting requirements. Exhibits A-H, attached to this document, establish specific requirements.

Exhibit A requires TNC to convey all documents to DWR for DWR’s review and approval prior to close of escrow.

Exhibit B establishes the budget for the grant and requires TNC to use the money within six months.

Exhibit C is titled the “North Delta Improvement Program Flood Protection Planning Participation Agreement.” This document restates the “multiple and complementary benefits” that will result from the acquisition as: “(i) agricultural land preservation, (ii) wildlife habitat protection, (iii) protection of floodplain from potential inappropriate and incompatible development, and (iv) potential future flood management improvements.” It defines the North Delta Improvement Program (NDIP) as

“a component of the implementation plan associated with the CALFED Bay-Delta Program. The NDIP is being implemented by DWR and coordinated through the Delta Protection Commission (the “**Commission**”), which will oversee a planning process involving multiple federal, state and local public agencies, together with interested private parties in the North Delta (the “**North Delta Planning Process**”), the ultimate goal of which is to develop and implement a final plan that will address flood management, ecosystem restoration and water supply reliability issues in the north delta region (the “**North Delta Plan**”).”

The agreement states that given Staten’s size and location, “many parties ... including DWR, anticipate that the North Delta Plan will include as a recommended outcome a specific flood management project or activity on or involving Staten Island” and that, consequently, a grant condition requires TNC to

“actively participate in the North Delta Planning Process with the ultimate objective of making Staten Island available for implementation of one or more flood management activities or projects that are recommended in the North Delta Plan; provided that any such recommended project or activity is consistent with the intent as expressed in Recital G of this Agreement and satisfies the requirements of this Agreement.”

The potential flood management activity or project on Staten Island, as further defined in Appendix C, “may include as a preferred recommendation the implementation and operation of a specific flood management project or activity on or involving Staten Island, which project or activity may include one or a combination of the following: landward levee set-backs, notched weir(s) or weir(s) in levee(s), a cut or cuts in a levee, with associated river and flood flows, water evacuation pumps, and environmental mitigation and habitat enhancement.”

“Recital G” of Appendix C requires that the NDIP treatment of Staten Island be one that “balances the funding objectives.” This is further defined as a project that:

- avoids “adverse impacts that may compromise the long-term economic viability of agricultural practices on Staten Island”;
- limits “any flooding on Staten Island to a frequency that will not irrevocably and/or materially interfere with the habitat and agricultural values of Staten Island, as confirmed by biologists having particular expertise respecting the specific wildlife values associated with Staten Island”; and

- includes a commitment by the implementing agency to “remove any flood water off Staten Island as quickly as necessary to, and in a manner and within periods and with adequate equipment that will, limit damages caused to the agricultural values and wildlife values associated with Staten Island,” as well as to protect structures and improvements on the property.

Exhibit C requires also that, once the NDIP has selected a plan to implement, TNC will transfer to DWR (or other implementing agency), without cost, the property interest necessary to implement that plan. If the North Delta planning process remains uncompleted within the ten year period following TNC’s acquisition of Staten Island, DWR may require TNC to transfer to DWR certain property interests that may be necessary to implement a flood management project on Staten Island.

Exhibit D is a short version of Exhibit C, for recordation in San Joaquin County.

Exhibit E grants to DWR (from TNC) a conservation easement “to preserve and protect each of the Multiple and Complementary Benefits of the Property” and “to encourage and promote wildlife-friendly agricultural practices on the Property.”

DWR’s specific rights under the easement are:

- to “identify, monitor, research, preserve and protect forever the natural, ecological, environmental and wildlife features of the Property, to the extent necessary to effectuate the express purposes of this Conservation Easement.
- A right of access, with prior notice,

TNC’s specific rights and obligations under the easement are:

- The right “to conduct agricultural practices on Staten Island” and the obligation to “refrain from engaging in any actions that would result in the conversion of any material portion of Staten Island away from agricultural use.” Material changes in use can only be made pursuant to a restoration plan reviewed by the Delta Protection Commission and approved by DWR and the Resources Agency and subject to CEQA.
- TNC may not alter the topography of the island or adjacent waterways, except as consistent with normal agricultural practices.
- All water rights remain with the property and may not be severed.

The easement defined in Exhibit E permits TNC to sell or transfer the fee interest in Staten Island to a new or existing nonprofit corporation, subject to DWR’s approval, “which approval shall not be unreasonably withheld.” This is consistent with TNC’s preferred scenario, which is to create a new non-profit organization, working with the Delta Protection Commission and San Joaquin County, and to transfer management responsibilities and ultimately title to this new entity

TNC may sell or transfer the property to any other entity only with DWR's prior approval and for consideration that equals or exceeds the appraised fair market value at the time of such transfer, and in such case DWR shall have the right of first refusal to acquire the property itself. In the event that TNC sells Staten Island to a non-affiliated third party, TNC will be required to forward the net sale proceeds received from such sale to DWR and Resources Agency to repay the grant funds. Any such sale to a third party will be subject to the conservation easement. This provision addresses the possibility that TNC, DPC and SJC fail to create a new organization to assume responsibility for the property and are forced to consider some alternative strategy, such as sale to a private entity.

Exhibit F provides procedural details related to the escrow process, and **Exhibits G and H** include standard State contract clauses.

The CALFED (NFWF) Grant Agreement

The CALFED grant agreement (actually an agreement between TNC and CALFED's contract manager, National Fish and Wildlife Foundation, or NFWF) generally restates the provisions of the DWR grant agreement and describes the purposes and conditions of the grant as follows:

- To allow Staten "to continue to be farmed in a manner consistent with achieving CALFED ecosystem objectives for the East Delta, as stated in the Ecosystem Restoration Program Plan (ERP, Vol. II, pp. 44-45 (prescriptions and measures for Greater Sandhill Crane), 47-48 (prescriptions and measures for Giant Garter Snake), 86-95 (vision for East Delta EMU, habitats, and species), 111-115 (targets and programmatic actions for agricultural land habitat)."
- TNC "will include the Delta Protection Commission ("Commission") in the planning for the long-term management of Staten Island. Contractor's future short-term and long-term management, and planning activities for Staten Island are intended to (1) protect critical agricultural wetlands for use by migratory birds, and (2) allow development, refinement and implementation of economically viable wildlife-friendly agricultural practices."
- "Potential future phases of activities on Staten Island may include improving the irrigation infrastructure to improve management of seasonally flooded fields and development and implementation of a restoration plan. For future phases of activities on Staten Island, Contractor will comply with all laws and regulations, including the California Environmental Quality Act (CEQA), that are applicable to Contractor with respect to such activities and will obtain approval for such future phases by the Resources Agency and/or other appropriate state agency."

The CALFED Grant Agreement also provides for the potential future release of funds to TNC by the Resources Agency to fund various start-up stewardship costs

associated with TNC's ownership of Staten Island and the purchase of the oil and gas mineral estate that is being reserved by the current owners if such can be successfully negotiated.

Complete copies of these agreements, their appendices, and the appraisal are available at the Delta Protection Commission office.

Summary provided by TNC, 10/31/01